

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DESHON HOLLOWAY,

Plaintiff,

**9:05-CV-501
(GLS/RFT)**

v.

**DONALD SELSKY, THOMAS
RICKS, JOHN DONELLI, and
CURTIS DROWN,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

DESHON HOLLOWAY
Plaintiff, *Pro Se*
96-A-8863
Clinton Correction Facility
P.O. Box 2001
Dannemora, New York 12929

FOR THE DEFENDANTS:

HON. ANDREW CUOMO
New York Attorney General
The Capitol
Albany, New York 12224

GERALD J. ROCK
Assistant Attorney General

**Gary L. Sharpe
U.S. District Judge**

MEMORANDUM-DECISION AND ORDER

I. Introduction

After plaintiff *pro se* Deshon Holloway filed a § 1983 action for violation of his Eighth and Fourteenth Amendment rights, *see Dkt. No. 1*; *see also* 42 U.S.C. § 1983, his complaint was referred to Magistrate Judge Randolph F. Treece for report and recommendation. *See* 28 U.S.C. § 636(b)(1)(A), (B); N.D.N.Y. R. 72.3(c); Gen. Order No. 12, § D(1)(G). Judge Treece subsequently issued a report recommending that the complaint be dismissed in its entirety. *See Report-Recommendation (“R&R”), Dkt. No. 36.*

Broadly construing Holloway’s complaint, Judge Treece concluded the following: (1) Holloway’s due process rights were not violated because the sentences imposed were ultimately reversed; (2) he failed to set forth any facts sufficient to constitute an Eighth Amendment violation; and (3) his claims against defendants in their official capacities should be dismissed due to sovereign immunity.

Holloway has now filed timely objections to Judge Treece’s report. *See Dkt. No. 37.* Holloway’s sole specific objection will be reviewed under a *de novo* standard, while the remainder of his objections are unspecific

and will be reviewed under a clearly erroneous standard. See *Almonte v. N.Y. State Div. of Parole*, 9:04-CV-484, 2006 WL 149049, at *4 (N.D.N.Y. Jan. 18, 2006). Upon careful consideration of the arguments, the relevant parts of the record, and the applicable law, the court adopts the Report-Recommendation in its entirety.

Holloway's sole specific objection attacks Judge Treece's conclusion that sovereign immunity shields defendants from liability in their official capacities. He specifically argues that since he seeks declaratory relief in his complaint, defendants may be held liable. As an initial matter, while Holloway objects to Judge Treece's finding, he fails to offer any factual or legal basis in support of his objection. Nonetheless, the court has reviewed Judge Treece's finding *de novo*.

Upon reviewing the record, it is not evident from the complaint that Holloway seeks any specific declaratory relief. Holloway uses the term "declaratory judgment" in his prayer for relief but does not elaborate further. Nonetheless, since the court ultimately finds here that Holloway has not suffered any constitutional violation, it is of no moment whether the suit is brought against the defendants in their individual or official capacities. Accordingly, following a *de novo* review, the court concludes that this

objection is meritless.

The remainder of Holloway's objections do not specifically address Judge Treece's factual and legal conclusions. Instead, Holloway has simply repeated the facts and arguments contained in his original petition. His objections contain no new analysis or arguments, nor do they cite authority in support of what are otherwise mere conclusory claims. Given the inadequacy of these objections, he has procedurally defaulted. See *Almonte v. N.Y. State Div. of Parole*, 9:04-CV-484, 2006 WL 149049, at *4 (N.D.N.Y. Jan. 18, 2006). Accordingly, the court has reviewed the remainder of Judge Treece's report and recommendation for clear error. See *Almonte*, 2006 WL 149049, at *6. Having discerned none, the court adopts the report and recommendation in its entirety.

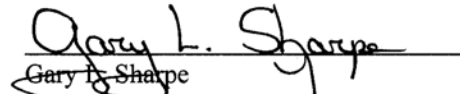
WHEREFORE, and for the reasons stated, it is hereby

ORDERED that defendants' motion for summary judgment (Dkt. No. 26) is **GRANTED**, and Holloway's complaint is **DISMISSED**; and it is further

ORDERED that the clerk provide a copy of this Decision and Order to the parties.

IT IS SO ORDERED.

February 6, 2007
Albany, New York


Gary L. Sharpe
U.S. District Judge